

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Anthony Bailey,

Case No.: 2:22-cv-00970-APG-EJY

Plaintiff

## Order Denying Motion

V.

[ECF No. 8]

Ben Gutierrez, et al.,

## Defendants

8 On April 17, 2023, I denied plaintiff Anthony Bailey's application to proceed *in forma*  
9 *pauperis* because he has accumulated four strikes under the PLRA. ECF No. 7 at 1. I found that  
10 Bailey's appeals in *Bailey v. Gunderson et al.*, No. 95- 17213; *Bailey v. Hunnell*, No. 98-15212;  
11 and *Bailey v. Leonhardt et al.*, No. 02-16378 each constitutes a strike. *Id.* at 2-3. I also found that  
12 Bailey accumulated a fourth strike in *Bailey v. Herndon*, No. 16-cv-02595, 2018 WL 2136356.  
13 *Id.* at 3. Finally, I noted that in *Bailey v. Williams*, No. 2:22-cv-00381-CDS-NJK, ECF No. 4, (D.  
14 Nev. 2022) a court in this district had previously determined that those cases count as strikes, and  
15 that the Ninth Circuit denied Bailey's appeal in that case. *Id.* at 3-4.

16 Following my order, Bailey filed a motion. ECF No. 8. Bailey's motion is very difficult  
17 to understand, and it does not clearly state what he is seeking. *Id.* Bailey appears to request  
18 certified copies of the dismissal orders for his appeals in *Bailey v. Gunderson et al.*, *Bailey v.*  
19 *Hunnell*, and *Bailey v. Leonhardt*, so that he can prove that they should not count as strikes. ECF  
20 No. 8 at 6. Bailey also appears to allege that he is not the Bailey in *Bailey v. Herndon*, so that  
21 case should not count as a strike. *Id.*

22 As to *Bailey v. Herndon*, the application to proceed *in forma pauperis* that was filed in  
23 that case was for an Anthony D. Bailey with the prison identification number 0036192. See Case

1 No. 2:16-cv-02595-JAD-CWH at ECF No. 5. That is the same name and prison identification  
2 that is on Bailey's application to proceed *in forma pauperis* in this case. But even assuming that  
3 Bailey is correct and that somehow someone else initiated that case in his name and without his  
4 knowledge, the three strikes from Bailey's appeals would still apply. Thus, Bailey still could not  
5 proceed *in forma pauperis* in this case.

6 As to Bailey's appeals, Bailey appears to argue that those appeals should not be counted  
7 as strikes because the orders dismissing them did not specifically identify them as strikes or  
8 specifically state that they were being dismissed on the grounds that they were frivolous,  
9 malicious, or failed to state a claim upon which relief may be granted. ECF No. 8 at 5-6. Bailey  
10 appears to request that I order certified copies of the dismissal orders in those cases so that he  
11 can prove that they are not strikes.

12 The PLRA does not require that a dismissal order specifically state that the dismissal  
13 constitutes a strike. In fact, even cases that were filed before the PLRA was enacted can count as  
14 strikes. *See Tierney v. Kupers*, 128 F.3d 1310, 1311-12 (9th Cir. 1997). The question is not  
15 whether the court order dismissing a case or an appeal specifically states that the dismissal is a  
16 strike. Rather, the question is whether the case or appeal was dismissed for being frivolous,  
17 malicious, or failing to state a claim.

18 As I explained in my previous order, "dismissed appeals that rely on district court  
19 findings that the appeal was not taken in good faith are the equivalent of a finding of frivolity  
20 and therefore count as a strike under § 1915(g)." *Gipbsin v. Roth*, No. 18-cv-03164, 2020 WL  
21 4364649, at \*5 (E.D. Cal. July 30, 2020) (citing *Knapp v. Hogan*, 738 F.3d 1106, 1110 (9th Cir.  
22 2013)), adopted by 2020 WL 6196226 (E.D. Cal. Oct. 22, 2020); see also *El-Shaddai v. Zamora*,  
23 833 F.3d 1036, 1046 (9th Cir. 2016) (reaffirming *Knapp*'s holding that "two dismissed appeals

1 counted as strikes because they relied on district court findings that the appeal [was] not taken in  
 2 good faith, and lack of good faith in this context has been held to be equivalent to a finding of  
 3 frivolity" (internal quotation marks and citation omitted)). Moreover, "an appeal may count as a  
 4 strike pursuant to [§] 1915(g) when the appellate court denies a prisoner [*in forma pauperis*]  
 5 status on appeal on grounds of frivolousness 'even though [the appellate court] did not dismiss  
 6 the appeal until later when the [appellant] did not pay the filing fee.'" *Gipbsin*, 2020 WL  
 7 4364649, at \*5 (quoting *Richey v. Dahne*, 807 F.3d 1202, 1208 (9th Cir. 2015)).

8 In each of the three appeals, the Ninth Circuit adopted the district court's finding that  
 9 Bailey's appeal was not taken in good faith, denied him permission to proceed *in forma*  
 10 *pauperis*, and dismissed the appeal for failure to prosecute when he did not pay the filing fee.<sup>1</sup>  
 11 Thus, each of those appeals constitutes a strike. Because the docket records of these cases  
 12 establish that they count as strikes, copies of the orders dismissing the cases are not necessary.  
 13 See *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005) ("[D]ocket records may be sufficient  
 14 to show that a prior dismissal satisfies at least one of the criteria under § 1915(g).")

15 I THEREFORE ORDER that Bailey's motion for copies of the dismissal orders in *Bailey*  
 16 *v. Gunderson et al.*, No. 95- 17213; *Bailey v. Hunnell*, No. 98-15212; and *Bailey v. Leonhardt et*  
 17 *al.*, No. 02-16378 (ECF No. 8) is DENIED.

18 I FURTHER ORDER the Clerk of the Court to send Bailey the order denying his  
 19 application to proceed *in forma pauperis* in *Bailey v. Williams*, No. 2:22-cv-00381-CDS-NJK at  
 20 ECF No. 4.

21  
 22 <sup>1</sup> The order denying Bailey's application to proceed *in forma pauperis* in *Bailey v.*  
 23 *Williams*, No. 2:22-cv-00381-CDS-NJK, attached the docket records from each of the three  
 appeals in question. I take judicial notice of that order. Bailey previously received that order and  
 the attached docket records. However, for Bailey's benefit, I will direct the Clerk of the Court to  
 resend him a copy of that order, including the attached docket records.

1 I FURTHER ORDER that I extend the deadline for Bailey to pay the \$402 filing fee until  
2 July 14, 2023. This case will be dismissed without prejudice unless Bailey pays the filing fee in  
3 full by that deadline.

4 DATED this 10th day of June, 2023.

5   
6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE

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